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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTIONE TRAYVON CISCO et al.,

Defendants and Appellants.

C086246

(Super. Ct. No. 16FE012117)

A jury convicted Antione Cisco and Reynaldo Eknar of robbery in concert, kidnapping for the purposes of extortion, and kidnapping for the purposes of robbery. The trial court sentenced each of them to a determinate term of 116 years 8 months and an indeterminate term of 63 years to life in prison.

Cisco and Eknar now contend (1) there is insufficient evidence of robbery in concert; (2) pursuant to Penal Code section 654¹, their sentences for robbery in concert

¹ Undesignated statutory references are to the Penal Code.

against two of the victims must be set aside, and most of their sentences for kidnapping for robbery must be stayed; and (3) we must remand to permit the trial court to exercise its new discretion regarding dismissal of the firearm enhancements.

We conclude substantial evidence supports the robbery in concert convictions, the trial court did not err under section 654, and remand is not required because the trial court anticipated the change in the law regarding its discretion and stated unequivocally that it would not strike the firearm enhancements if it had the discretion to do so. Under the circumstances, we will affirm the judgment.

BACKGROUND

One morning Janisha Mason drove Cisco and Eknar in Mason's sports utility vehicle (SUV) to the home of M.C. and her sons Phillip and Peter. Mason waited in the SUV as Cisco and Eknar broke down the front door of the home and demanded money from the victims. Cisco and Eknar stole an iPad and a cell phone from the house.

Cisco also found Phillip's wallet, put a gun to Phillip's head, directed Phillip to withdraw money from a bank, and forced him into the SUV where Mason was asleep in the driver's seat. Eknar remained in the house, holding M.C. and Peter at gunpoint. Cisco hit Mason to wake her up, and Mason drove for about a mile before swerving and stopping. Cisco changed seats with her and drove to a bank so Phillip could withdraw money, but the bank was not open.

They drove back to the house where Eknar forced M.C. and Peter into the SUV with the others. Cisco drove toward another bank but collided with a parked car. The group then went to Mason's apartment where Cisco and Eknar forced M.C., Phillip and Peter into a gray car at gunpoint. Mason remained in the SUV and met the rest of the group at a gas station, where she commented about how rich they were going to be. Mason then drove off in the SUV while Cisco and Eknar proceeded to the bank with the victims. Phillip withdrew \$8,000 and gave the money to Cisco.

The group then drove to a different bank where Peter had an account. But Peter alerted bank employees and Sacramento police officers arrested Cisco and Eknar. Officers found two loaded handguns in the gray car along with an envelope containing the \$8,000 that Phillip had withdrawn.

Mason pleaded no contest to one count of first degree robbery. A jury convicted Cisco and Eknar of robbery in concert (§§ 211, 213, subd. (a)(1)(A)), kidnapping for the purposes of extortion (§ 209, subd. (a)), and kidnapping for the purposes of robbery (§ 209, subd. (b)(1)). In addition, the jury found true enhancement allegations that Cisco and Eknar each personally used a firearm in the commission of the offenses. (§ 12022.53, subd. (b).)

The trial court sentenced Cisco and Eknar each to a determinate term of 116 years 8 months and an indeterminate term of 63 years to life in prison. It declined to stay punishment for any offense under section 654, stating: “Obviously there’s different victims and different events that were alleged and proven to the jury.” Although the trial court agreed with defense counsel that the motivation was money, it found that each crime was divisible into separate and distinct steps and intents, observing, “there’s nothing simultaneous about it.”

The trial court noted it would soon have discretion to strike the firearm enhancements based on an upcoming change in the law, but it stated unequivocally that it would not strike the firearm enhancements if it had such discretion: “I would decline to exercise my discretion and strike any of those conduct enhancements. It was very clear from the evidence that guns were used in a very violent and cruel way throughout the entire . . . morning against each of the victims, so I would not be striking them even if I had the discretion to do so at this point.”

DISCUSSION

I

Cisco and Eknar contend there is insufficient evidence of robbery in concert because there is no credible evidence that Mason did anything to aid the robberies. We disagree.

A defendant bears a difficult burden in claiming insufficient evidence to sustain a conviction, because our role on appeal is a limited one. (*People v. Akins* (1997) 56 Cal.App.4th 331, 336.) In considering a claim of insufficient evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence such that a reasonable jury could find the defendant guilty beyond a reasonable doubt. (*People v. Elliot* (2005) 37 Cal.4th 453, 466.)

“Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” (§211) But as relevant to this case, when a defendant voluntarily acts in concert with two or more other persons to commit a robbery in an inhabited dwelling house, the defendant is subject to increased punishment. (§ 213, subd. (a)(1)(A).) A defendant has been found to have acted in concert when assisted by others who did affirmative acts facilitating the crimes. (*People v. Jones* (1989) 212 Cal.App.3d 966, 969.) CALCRIM No. 1601 instructs a jury in pertinent part that to prove a defendant is guilty of robbery in concert, the People must prove that the defendant personally committed or aided and abetted a robbery in an inhabited dwelling, and did so with two or more other people who also committed or aided and abetted the commission of the robbery in an inhabited dwelling.

Here there is substantial evidence that Mason knew of Cisco and Eknar’s unlawful purpose and facilitated that purpose. She drove Cisco and Eknar to the victim’s home in her SUV while both Cisco and Eknar were carrying loaded weapons. Cisco forced Phillip into the SUV and Mason drove toward a bank for a short period of time. She

became upset about the course of events only when Cisco sideswiped a parked car and damaged her SUV. But when she met Cisco and Eknar at the gas station, she commented about how rich they were going to be. Substantial evidence supports the robbery in concert convictions.

II

Cisco and Eknar next claim that pursuant to Penal Code section 654, their sentences for robbery in concert against Phillip and Peter must be set aside, and most of their sentences for kidnapping for robbery must be stayed.

Section 654, subdivision (a) provides in relevant part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

Section 654 applies not only where there was one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction. (*People v. Perez* (1979) 23 Cal.3d 545, 551.) However, if the evidence discloses that a defendant entertained multiple criminal objectives, he may be punished for the independent violations committed in pursuit of each objective. (*Ibid.*)

“ ‘The defendant’s intent and objective are factual questions for the trial court.’ ” (*People v. Coleman* (1989) 48 Cal.3d 112, 162.) Trial courts have broad latitude to determine whether a defendant harbored one or more objectives, and we uphold their findings on appeal if there is any substantial evidence in the record to support them. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) “ ‘We review the court’s determination of [a defendant’s] “separate intents” for sufficient evidence in a light most favorable to the judgment, and presume in support of the court’s conclusion the existence of every fact the trier of fact could reasonably deduce from the evidence. [Citation.]’ ” (*People v. Andra* (2007) 156 Cal.App.4th 638, 640-641.) Moreover, section 654 does not

apply to repeated violations of the same statute. (*People v. Correa* (2012) 54 Cal.4th 331, 340-341.)

Here, the trial court did not err under section 654 because Cisco and Eknar engaged in different phases of their crime spree with distinct acts punishable by the same statutes. They began with the home invasion robbery and could have stopped there, but then switched to the kidnapping by force of Phillip, and then switched again to the separate kidnapping by force of all the victims in an effort to steal from the victims' bank accounts rather than merely from their persons or their home.

Cisco and Eknar's section 654 contention lacks merit.

III

In addition, Cisco and Eknar argue we must remand the matter to permit the trial court to exercise its new discretion regarding dismissal of the firearm enhancements.

On October 11, 2017, the Governor signed Senate Bill No. 620 (2017-2018 Reg. Sess.; Stats. 2017, ch. 682, § 2). The bill amended sections 12022.5 and 12022.53, effective January 1, 2018, and gave trial courts discretion to dismiss firearm enhancements imposed pursuant to those sections. (§§ 12022.5, subd. (c), 12022.53, subd. (h).)

We agree with the parties that the applicable amendment applies to this case. It applies to cases not yet final. (*People v. Arredondo* (2018) 21 Cal.App.5th 493, 507; *People v. Woods* (2018) 19 Cal.App.5th 1080, 1090-1091.)

Nevertheless, we agree with the People that remand is not necessary. The trial court, with knowledge that it would soon have discretion to strike the firearm enhancements, stated unequivocally it would not strike the firearm enhancements if it had discretion to do so. Because remand would be futile, we decline to do so here. (See *People v. Chavez* (2018) 22 Cal.App.5th 663, 713; *People v. McDaniels* (2018) 22 Cal.App.5th 420, 425 [the court need not remand if the "record shows that the trial court clearly indicated when it originally sentenced the defendant that it would not in any

event have stricken a firearm enhancement”]; *People v. Gutierrez* (1996) 48 Cal.App.4th 1894, 1896 [“[T]he sentencing court clearly indicated that it would not, in any event, have exercised its discretion to strike the [Three Strikes] allegations”].)

DISPOSITION

The judgment is affirmed.

/S/
MAURO, Acting P. J.

We concur:

/S/
DUARTE, J.

/S/
RENNER, J.